

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

PAUL HUNT,

Plaintiff,

v.

No. 1:16-cv-00272-LF-KK

BOARD OF REGENTS OF THE UNIVERSITY
OF NEW MEXICO; SCOTT CARROLL, M.D., in his
individual and official capacities; JOHN DOE AND
JANE DOE MEMBERS OF THE COMMITTEE
FOR STUDENT PROMOTION AND EVALUATION,
in their individual and official capacities; TERESA A.
VIGIL, M.D., in her individual and official capacities;
PAUL ROTH, M.D., in his individual and official
capacities,

Defendant.

AFFIDAVIT OF SHEILA HICKEY

STATE OF NEW MEXICO)
)ss
COUNTY OF BERNALILLO)

Sheila Hickey, M.D., having been first duly sworn upon oath states:

1. I am Assoicate Dean of Students at the University of New Mexico School of Medicine and have held that position since October 1, 2013. I make this affidavit with personal knowledge of the statements made herein, after review of pertinent business and public records, if appropriate.

2. The University of New Mexico School of Medicine has adopted a Social Media Policy, attached as Exhibit 2 and the University has adopted a Respectful Campus Policy, attached as Exhibit 3.

3. The Committee for Student Promotion and Evaluation issued a letter to Plaintiff on November 15, 2012, attached as Exhibit 4, outlining the charge against Plaintiff and providing him an opportunity to address the allegations.

4. The Committee for Student Promotion and Evaluation issued a letter to Plaintiff on January 4, 2013, attached as Exhibit 5.

5. Plaintiff did not avail himself of the review process provided in the University of New Mexico Promotions and Due Process Policy.

Sheila Hickey *u*

Subscribed and sworn before me by Sheila Hickey on this 8 day of April, 2016.

[Signature]
Notary Public

My Commission expires:

04/04/2017



Social Media Policy

At the University of New Mexico School of Medicine (UNMSOM), we recognize that social media sites like Facebook, Twitter, YouTube and Flickr have become important and influential communication channels for our community. To assist in posting content and managing these sites, UNMSOM has developed policies and guidelines for use of social media.

General Guidelines

- Be mindful that all posted content is subject to review in accordance with UNMSOM policies and the Student Professional Code of Conduct.
- The purpose of using these communication channels on behalf of UNMSOM is to support the university's mission, goals, programs, and sanctioned efforts, including university news, information, content and directives.
- Prior to engaging in any form of social media involving UNMSOM, you must receive permission from the Office of Medical Student Affairs and the Associate Dean of Students.
- When using an officially recognized social media channel, assume at all times that you are representing UNMSOM.
- Confidential or proprietary university information or similar information of third parties, who have shared such information with you, should not be shared publicly on these social media channels. Use good ethical judgment and follow UNM and federal requirements such as the Health Insurance Portability and Accountability Act (HIPAA), the Family Educational Rights and Privacy Act (FERPA).
- Do not discuss/promote/post any situation involving named or pictured individuals acting in a UNM capacity on social media without their express written permission.
- If you identify yourself as a UNM student in any online forum and/or use a UNM email address, you must make it clear that you are not speaking for UNM. If you post any content to a website outside of UNM and it has something to do with your schooling, the work you do, or other subjects associated with UNM, use a disclaimer such as, "The postings on this site are my own opinions and do not represent the views or opinions of UNM."
- Do not use any UNM Logo or protected images without written permission.
- Exercise discretion, thoughtfulness and respect for your colleagues, associates and the university's supporters/community (social media fans). Avoid discussing or speculating on internal policies or operations. Refrain from engaging in dialogue that could disparage colleagues, competitors, or critics.
- Refrain from reporting, speculating, discussing or giving any opinions on University topics or personalities that could be considered sensitive, confidential or disparaging.
- UNMSOM or UNM logos and/or visual identity cannot be used for personal social media.
- Your personal social media account is not an appropriate place to distribute University news. If you have University information and news that you would like to announce to the public or media, please contact Student Affairs.
- UNMSOM does not routinely monitor personal websites or social media outlets, however any issues that violate any established UNM Policy will be addressed.
- Violation of this or any UNM policy may result in disciplinary action, up to and including dismissal from UNM.



Administrative Policies and Procedures Manual - Policy 2240: Respectful Campus

Date Originally Issued: 07-01-2011

Authorized by UNM Regents' Policies 2.4 "Diversity and Campus Climate" & 2.5 "Sexual Harassment"

Process Owner: Vice President for Human Resources



1. General

The University of New Mexico promotes a working, learning, and social environment where all members of the UNM community, including but not limited to the Board of Regents, administrators, faculty, staff, students, and volunteers work together in a mutually respectful, psychologically-healthy environment. UNM strives to foster an environment that reflects courtesy, civility, and respectful communication because such an environment promotes learning, research, and productivity through relationships. Because a respectful campus environment is a necessary condition for success in teaching and learning, in research and scholarship, in patient care and public service, and in all other aspects of the University's mission and values, the University is committed to providing a respectful campus, free of bullying in all of its forms. This Policy describes the values, cornerstones, and behaviors that delineate a respectful campus and applies to all members of the UNM community, including, but not limited to students, faculty, and staff.

2. Values

A respectful campus exhibits and promotes the following values:

- displaying personal integrity and professionalism;
- practicing fairness and understanding;
- exhibiting respect for individual rights and differences;
- demonstrating harmony in the working and educational environment;
- respecting diversity and difference;
- being accountable for one's actions;
- emphasizing communication and collaborative resolution of problems and conflicts;
- developing and maintaining confidentiality and trust; and
- achieving accountability at all levels.

Exhibit
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3. Cornerstones of a Respectful Campus

The commitment to a respectful campus calls for promotion of an environment where the following are upheld:

- All individuals have important contributions to make toward the overall success of the university's mission.
- UNM's mission is best carried out in an atmosphere where individuals at all levels and in all units value each other and treat each other with respect.
- Individuals in positions of authority serve as role models in the promotion of a respectful campus. Promoting courtesy, civility, and respectful communication is consistent with the responsibility of leadership.
- Individuals at all levels are allowed to discuss issues of concern in an open and honest manner, without fear of reprisal or retaliation from individuals above or below them in the university's hierarchy. At the same time, the right to address issues of concern does not grant individuals license to make untrue allegations, unduly inflammatory statements or unduly personal attacks, or to harass others, to violate confidentiality requirements, or engage in other conduct that violates the law or University policy.
- Bullying is unacceptable in all working, learning, and service interactions.

4. Destructive Actions

Actions that are destructive to a respectful campus will not be tolerated. These actions include, but are not limited to:

- Sexual harassment--refer to UAP 2730 ("Sexual Harassment");
- Retaliation-- refer to UAP 2200 ("Whistleblower Protection and Reporting Suspected Misconduct and Retaliation");
- Conduct which can affect adversely the University's educational function, disrupt community living on campus, or interfere with the right of others to the pursuit of their education or to conduct their University duties and responsibilities--refer to UNM Faculty Handbook, Section C05, "Rights and Responsibilities at the University of New Mexico," "Visitor Code of Conduct," "Student Code of Conduct," and UAP 2220 ("Freedom of Expression and Dissent");
- Unethical conduct--refer to UNM Faculty Handbook, Section B, Appendix V, "Harassment and Professional Ethics Policy"; and
- Bullying behavior which is defined in Section 5, herein.

5. Definition of Bullying

Bullying can occur when one individual or a group of individuals exhibits bullying behavior toward one or more individuals. Bullying is defined by the University as repeated mistreatment of an individual(s) by verbal abuse, threatening, intimidating, humiliating conduct or sabotage that creates or promotes an adverse and counterproductive environment, so as to interfere with or undermine legitimate University learning, teaching, and/or operations. Bullying is not about occasional differences of opinion, conflicts and problems in workplace relationships as these may be part of working life. Bullying can adversely affect dignity, health, and productivity and may be grounds for corrective disciplinary action, up to and including dismissal. The University Counseling, Assistance, and Referral Services (CARS) Department and the University Ombuds/Dispute Resolution Services for Faculty and Staff can provide guidance for determining whether behavior meets the definition of bullying. Examples of behaviors that meet the definition of bullying above include, but are not limited to:

5.1. Physical Bullying

Physical bullying is pushing, shoving, kicking, poking, and/or tripping; assault or threat of physical assault; damage to a person's work area or property; damage to or destruction of a person's work product.

5.2. Verbal Bullying

Verbal bullying is repeated slandering, ridiculing, or maligning of a person or persons, addressing abusive and offensive remarks to a person or persons in a sustained or repeated manner; or shouting at others in public and/or in private where such conduct is so severe or pervasive as to cause or create a hostile or offensive educational or working environment or unreasonably interfere with the person's work or school performance or participation.

5.3. Nonverbal Bullying

Nonverbal bullying can consist of directing threatening gestures toward a person or persons or invading personal space after being asked to move or step away.

5.4. Anonymous Bullying

Anonymous bullying can consist of withholding or disguising identity while treating a person in a malicious manner, sending insulting or threatening anonymous messages, placing objectionable objects among a person's belongings, leaving degrading written or pictorial material about a person where others can see.

5.5. Threatening Behavior Toward a Person's Job or Well-Being

Making threats, either explicit or implicit to the security of a person's job, position, or personal well-being can be bullying. It is not bullying behavior for a supervisor to note an employee's poor job performance and potential consequences within the framework of University policies and procedures, or for a professor or academic program director to advise a student of unsatisfactory academic work and the potential for course failure or dismissal from the program if uncorrected.

6. Reporting Destructive Actions

The destructive actions described in Section 4, herein should be reported in accordance with the applicable policies and procedures listed herein; however, extreme incidents may be reported directly to UNM Police in accordance with UAP 2210 ("Campus Violence"). Bullying behavior should be reported as follows:

6.1. Students

An individual who believes a student has engaged in bullying behavior should report the behavior to the Dean of Students Office. Students in the School of Medicine who believe that a faculty member has engaged in bullying behavior towards them should follow the procedures in the UNM School of Medicine "Teacher Conduct and Learner Complaints." All other students who believe that a staff or faculty member has engaged in bullying behavior towards them may follow the procedures listed in Sections 6.2, and 6.3, below.

Students may also report bullying behavior by:

- contacting the Dean of Students Office,
- calling the UNM Hotline 1-888-899-6092 (call may be anonymous, but doing so may limit the University's ability to conduct a full investigation), or

- contacting the University Internal Audit Department.

If the bullying of students is based on race, color, religion, national origin, physical or mental disability, age, sex, sexual preference, gender identity, ancestry, medical condition, or spousal affiliation, it should be reported to the University Office of Equal Opportunity.

6.2. Staff

An individual who believes a staff member has engaged in bullying behavior may report the behavior using any of the options listed in Section 4 of UAP 2200 ("Whistleblower Protection and Reporting Suspected Misconduct and Retaliation"). The individual *should select the reporting method he or she is most comfortable with and is most appropriate to the situation*. Although bullying behavior may not meet the definition of misconduct in Policy 2200, suspected bullying behavior will be reported and investigated in the same manner as misconduct.

6.3. Faculty

An individual who believes a faculty member has engaged in bullying behavior should follow the procedures listed on the Faculty Handbook website maintained by the Office of the University Secretary. These procedures were approved by the Faculty Senate and all subsequent changes must be approved in accordance with processes defined by the Faculty Senate.

7. Monitoring

An annual survey will be undertaken by the Faculty Senate Policy Committee in collaboration with the Staff Council and the Division of Human Resources to measure the effectiveness of the Respectful Campus Policy. The survey should provide ongoing monitoring of faculty and staff attitudes concerning the campus climate and culture. The survey results will be distributed to the Faculty Senate, Staff Council, President of the University, and executive vice presidents.

8. Related Policies

"Diversity and Campus Climate," Policy 2.4, Board of Regents Policy Manual
"Sexual Harassment" Policy 2.5, Board of Regents Policy Manual
UAP 2200 ("Whistleblower Protection and Reporting Suspected Misconduct and Retaliation Policy")
UAP 2220 ("Freedom of Expression and Dissent")
UAP 2210 ("Campus Violence")
UAP 2300 ("Inspection of Public Records")
UAP 3220 ("Ombuds/Dispute Resolution Services for Staff")
UAP 2730 ("Sexual Harassment")
"Student Code of Conduct," Pathfinder
"Visitor Code of Conduct," Pathfinder
UNM Faculty Handbook, Section C05, "Rights and Responsibilities at the University of New Mexico"
UNM Faculty Handbook, Section B, Appendix V, "Harassment and Professional Ethics Policy"
UNM School of Medicine "Teacher Conduct and Learner Complaints" Policy

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New Mexico's Flagship University

November 15th, 2012

Paul Hunt
Address
Albuquerque, NM zip

Dear Mr. Hunt,

Dr. Espey, the Dean of Students, has formally referred you to the Committee for Student Performance and Evaluation (CSPE) due to allegations of unprofessional conduct made by other students related to a recent post you made on Facebook regarding your opposition to abortion and the recent election results. While you have every right to your political and moral opinions and beliefs, there is still a professionalism standard that must be maintained as a member of the UNM medical school community. According to the UNM Respectful Campus Policy (2240):

*Individuals at all levels are allowed to discuss issues of concern in an open and honest manner, without fear of reprisal or retaliation from individuals above or below them in the university's hierarchy. At the same time, the right to address issues of concern does not grant individuals license to make untrue allegations, **unduly inflammatory statements or unduly personal attacks, or to harass others**, to violate confidentiality requirements, or engage in other conduct that violates the law or University policy.*

The Respectful Campus Policy also applies to communication through social media outlets such as Facebook as stated in the UNMSOM Social Media Policy:

UNMSOM does not routinely monitor personal websites or social media outlets, however any issues that violate any established UNM Policy will be addressed. Violation of this or any UNM policy may result in disciplinary action, up to and including dismissal from UNM.

CSPE will be conducting an investigation into the allegations at its November 20th meeting at 3pm and we would like you to prepare a statement regarding the allegations and be prepared to answer questions from the committee members. Please notify the Office of Student Affairs by 5pm on Monday, November 19th, if you are unable to attend the meeting. Please see the attached copies of the Respectful Campus Policy and the Social Media Policy.

Sincerely,

Scott Carroll, MD
Chair, CSPE

Cc: Student file

Exhibit
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January 4th, 2013

Paul Hunt
Address
Albuquerque, NM zip

Dear Mr. Hunt,

Thank you for attending the November 20th meeting of the Committee for Student Promotion and Evaluation (CSPE) to address allegations of unprofessional conduct related to your Facebook posts (see attached screen shots). After an extensive discussion, the committee substantiated that your Facebook post was in fact unprofessional conduct due to violations of the UNM Respectful Campus Policy (2240) and the UNM School of Medicine Social Media Policy.

However, instead of dismissing you from the school of medicine, the committee has chosen to impose a professionalism enhancement prescription composed of two components; an ethic component and a professionalism component, each with its own mentor.

The ethics component, which will focus on patient autonomy and the virtue of tolerance, will be mentored by Cynthia Geppert MD PhD. Dr. Geppert will assign readings and supervise a reflective writing assignment on patient autonomy and tolerance. The final product will be presented to CSPE in two to four months. CSPE will evaluate the final product to determine if it satisfies this component of your prescription. Please contact Dr. Geppert at cgeppert@salud.unm.edu as soon as possible to begin the prescription.

The professionalism component, which has four parts, will be mentored by Tim Nelson, MD. Part one is a reflective writing assignment on the public expression of political beliefs by physicians with final product presented to CSPE in a three to six month timeframe. Part two is an apology letter, due to CSPE in one month. You will then have the option of presenting the apology letter to your classmates, select individuals or no one as you chose. Part three is to rewrite your original Facebook post in a passionate, but professionally appropriate way with the final product due to CSPE in a six to eight month time frame. Finally, part four is to have ongoing meetings, at least monthly, with Dr. Nelson for the next 12 months. All written products will be submitted to CSPE within the specified windows at which time CSPE will determine if they satisfy this component of your prescription.

In addition, CSPE also voted to require notation of your professionalism violation in your Dean's Recommendation Letter provided to residency training programs. However, you may choose to petition CSPE to remove the notation at some point in the future. Also, please be aware that any further professionalism lapses will result in referral to CSPE and may result in adverse action such as dismissal from the UNM School of Medicine. Further, if you fail to fulfill the ethics and professionalism requirements set forth in this letter, you may be subject to adverse action, including dismissal from the School of Medicine.

EXHIBIT

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As noted in the UNMSOM Promotions and Due Process Policy, *"If the student believes that the decision imposing corrective action (educational prescription) is fundamentally flawed, unfair or otherwise inappropriate, the student can request review by the Senior Associate Dean of Education (Dr. Craig Timm). The student shall present his or her reasons for disputing the action in writing. The Senior Associate Dean of Education may meet with the student and may discuss the matter with members of the CSPE and other faculty, as the Senior Associate Dean deems appropriate. The decision of the Senior Associate Dean of Education is final for the School of Medicine and for the University of New Mexico."*

Sincerely,

Scott Carroll, MD
Chair, CSPE

Cc: Student file